

**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, DC 20554**

In the Matter of Rules and Regulations	)	
Implementing the Telephone Consumer	)	CG Docket No. 02-278
Protection Act of 1991	)	

**COMMENTS OF STEWART ABRAMSON**

I am an individual living in Pittsburgh Pennsylvania. Over the past few years I have received many telemarketing calls and text messages on my cellular telephone, and the number of such calls seems to be increasing. Because I carry my cellular telephone with me almost all of the time, these telemarketing calls have interrupted me not just in the privacy of my home, but also while I am at work, while I am driving my car, while I am shopping for groceries ... basically anywhere and everywhere I go. There is no doubt in my mind that these telephone calls and text messages were autodialed calls that were made by dialing machines without human intervention and that they were in violation of the Telephone Consumer Protection Act.

It has recently come to my attention that Communication Innovators submitted an *Ex Parte* letter to the FCC in an effort to have the FCC rule that an “automatic telephone dialing system” applies only to equipment that has the “present capacity” at the time the calls are being made to store or produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers. The term “present capacity” is a red herring that does not resolve anything and is meant only to confuse the issue.

I urge the Commission to reject the narrow definition of an “automatic telephone dialing system” proposed by Communication Innovators and its supporters. If a dialer calls telephone numbers from a list of telephone numbers, then it should not matter if the dialer itself stores the list of telephone numbers that it calls or if the dialer produces the telephone numbers that it calls by obtaining them from a list of telephone numbers that are stored on a different separate computer. Either way, the dialer has the capacity to store or

produce telephone numbers to be called, using a random or sequential number generator, and to dial such numbers, and it is thus an “automatic telephone dialing system”. An “automatic telephone dialing system” must have telephone numbers to dial, and no matter how the dialer stores or produces the telephone numbers that it calls, it must step through a list of telephone numbers either randomly or sequentially.

To support their request to the Commission, Communication Innovators relies on a discovery ruling in the case of *Hunt v. 21st Mortgage Corporation*, United States District Court, Northern District of Alabama, Case No. 2:12-cv-2697-WMA (see the Memorandum Opinion and Order, Document 31, filed 09/17/13). However, just the day before Communications Innovators submitted their request to the Commission, that very same court ruled as follows (see the Memorandum Opinion and Order, Document 42 Filed 10/28/13):

“If equipment automatically dials numbers, it cannot be used to call cell phones. If it cannot do so, the restriction does not apply. This simple principle guides both FCC rulings and this court’s earlier decision, and will continue to guide the court as this case proceeds to the merits.”

Both the Court and the Commission appear to understand that if telemarketers are allowed to use automated dialers to call cellular telephones, then we can all expect not only to be interrupted by telemarketing calls in the privacy of our homes, but we can also expect to be interrupted by telemarketing calls no matter where we are or what we are doing. I urge the Commission to reject any interpretation of an “automatic telephone dialing system” that would allow telemarketing companies to design dialers that can call lists of cellular telephone numbers without human intervention.

Respectfully submitted by

Stewart Abramson

11/3/13